IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1594 OF 2007

Dhananjay Raghunath Daund. ..Petitioner.
Versus
The Additional Commissioner
of Police, Anti-Corruption Bureau
and 03 Ors. ..Respondents.

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Mrs.Manisha M. Bhosale, Adv. for the Petitioner.
Mr.M.S.Mhambre, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATED : SEPTEMBER 03, 2007.

P.C.:-

1. Heard.

2. By the present Petition, the petitioner is seeking directions to the State CID (Crime) to register offence on the complaint of the petitioner under Sections 120-B of IPC read with Sections 182, 192, 193, 196, 211, 217, 218, 342, 352, 353, 355, 465, 467, 471, 499, 500 and 501 of IPC as also direction to the respondent No.3 to take suitable action against respondent No.1

for delaying the registration of FIR in relation to the complaint filed by the petitioner.

3. The relief asked for relates to the complaint filed by the petitioner on 12th June, 2006 with the Director General of Police, Mumbai along with statement dated 12th June, 2006 of the petitioner. The last para of the said statement to which attention was drawn during the course of the arguments by the learned Advocate appearing for the petitioner reads thus :-

> ". Thus ACP Suhas Rane, Ramesh Mahale, PI Dhanaji Nalwade, ACP Bhagat, P.I. Bhargude, H.C. 3144, P.N. 22878, 23345, 23887, P.C. 24598, 28046, W.P.C. No.1444 and, complainant Satish Kumar Trikharam Gupta, Panchas Prakash Mukund Rane & Samsher Nadar Pathan and API Sujata Patil, P.I. Sangita Patil had hatched the criminal conspiracy to implicate me in false corruption case. In furtherance of the said

criminal conspiracy they have prepared a false and fabricated pre trap Panchnama and thereafter the ante dated false F.I.R., dated 11.02.2002, was prepared on 13.02.2002 by ACP Rane and also they prepared fabricated valuable documents and records such as trap Panchnama, station diary entries, log book entries, etc with intention to injure me and securing my conviction in the criminal case and also to protect the convicted criminal Satish Gupta from arrest, recovery of stolen goods and his prosecution. In furtherance of the said criminal conspiracy they have also wrongfully confined me, used criminal force to deter me from performing my lawful duties as public servant with the intention to dishonour me, humiliate me and they have also defamed me by intentionally publishing the false case in newspapers. These offence

> punishable under Sections 120-B IPC, 120-B IPC r/w 182, 192, 193, 196, 211, 217, 218, 342, 352, 353, 355, 465, 467, 471, 499, 500, 501 IPC. I am, therefore, lodging this F.I.R. against above said persons for lawful action for committing offences under the above said sections of law."

4. Upon hearing the learned Advocate appearing for the accused and the perusal of the petition and the annexures thereto, it is apparent that the grievance of the petitioner is entirely based on the judgment passed by the Sessions Court in Special Case No.62 of 2003 on 31st August, 2005. In the said case the petitioner was acquitted under Section 235(1) of Criminal Procedure Code for the offences punishable under Sections 7, 11, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The petitioner is Assistant Police Inspector. Though the complaint alleges of preparation of false and fabricated trap panchnama in relation to the

petitioner, to the specific query in that regard to the learned Advocate appearing for the petitioner, she could draw our attention only to the following observations by the learned Sessions Judge in relation to the trap panchnama. The observations read thus :-

> 17. One of the points about falsity of prosecution case with reference to the incident of 12.2.2002 is heavily canvassed on behalf of accused thereby contending that on that day complainant was not in a position to attend office of ACB as he was present in Sessions Court. The suggestion put to PW 2 to this effect though denied by complainant I find much substance in the same. Similarly suggestions put to IO though not denied by this witness he had deposed that he is not aware if on the day of incident on 12.2.2002 complainant was present in the Sessions Court in SC No.753/99 upto 5 pm. Advocate for accused while cross-examining PW.5 the IO has

brought on record certified copy of Roznama dated 12.2.2002 of Sessions Court in SC No.753/99 which is certified copy and is accordingly marked at Ex.34. On perusal of contents of said documents it reveal that on 12.2.2002 complainant was present in the Court on that day and his statement was partly recorded u/s.313 of Cr.PC and filed below Ex.38 certified copy of judgment in SC No.753/99 wherein complainant is shown as accused no.1 in said sessions case and is convicted on 18.12.2002. From the documents on record Ex.34 and Ex.40 thus it appears that on 12.12.2002 complainant who is shown as accused no.1 in Ex.34 was present in the Court till the court time is over and therefore contents of pre-trap panchanama Ex.8 of its commencement at 3 pm. on 12.2.2002 and its conclusion, at 5.10 pm. showing presence of complainant in the office

> of ACB does not inspire confidence for the reason that when the complainant is shown present in the criminal proceedings in this court on 12.2.2002 during the same time he is shown present at the office of ACB which further creates doubt in the case of prosecution right from its drawing of pre-trap panchnama."

5. Obviously the observation is merely to the effect that the prosecution has failed to establish the panchnama and therefore the evidence does not inspire confidence and hence the petitioner was granted benefit of doubt. Merely because the Sessions Court has chosen not to believe the documentary proof produced by the prosecution, that itself cannot be sufficient to conclude that the prosecution has fabricated the evidence. Even otherwise in case of fabrication of evidence it is for the concerned Court to initiate necessary action. The learned APP has placed on record a letter dated 30th August, 2007 addressed to the petitioner which

apparently discloses that the police authorities after perusal of the complaint have arrived at a conclusion that there is no substance in the said complaint nor it disclose any cognizable offence so as to register the FIR. Apart from the last paragraph in the said complaint, the learned Advocate appearing for the petitioner has also not been able to bring to our notice any allegation in that complaint or the statement which could reveal cognizable offence so as to enable the police authorities to register a FIR.

6. The letter dated 30th August, 2007 apparently discloses that as regards the alleged lapses on the part of the police authorities the concerned authorities have already taken note thereof and have initiated appropriate action. The learned Advocate appearing for the petitioner has drawn our attention to the decision of the Apex Court in **Lallan Chaudhary & Ors. Vs. State of Bihar & Anr. 2006 ALL MR (Cri) 3561 (S.C.)** wherein it was held that Section 154 of the Code of Criminal Procedure

casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. It was further held that the mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information. Once the information placed before the police authorities did not disclose any cognizable offence as such, no fault can be found with the decision of the police authorities not to register complaint of the petitioner as FIR. In the result therefore, there is no case made out for interference in the matter. The petitioner therefore fails and is hereby rejected.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]